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C O N F I D E N T I A L OTTAWA 1493

E.O. 11652: GDS

TAGS: MARR, CA

SUBJ: NORAD AGREEMENT

REF: (A) OTTAWA 1292; (B) STATE 090698; (C) OTTAWA 1442

(D) OTTAWA 1479

1. EMBOFFS DISCUSSED SUBJECT WITH EXTAFF DEFENCE RELATIONS
OFFICIAL MARSHALL AND LEGG APRIL 23. IN ADDITION TO
CHANGES PROPOSED REF B ACCEPTANCE OF WHICH BY GOC INDICATED
IN REF C, EXTAFF OFFICIALS MADE FOLLOWING PROPOSALS:

2. IN FIRST PARAGRAPH, FIRST SENTENCE OF REF A DRAFT,
DIFFERENCE OVER WHETHER "DEFENCE" SHOULD BE "JOINT" OR
"STRATEGIC" SHOULD BE RESOLVED BY ELIMINATING ADJECTIVE,
LEAVING FINAL HALF OF SENTENCE TO READ "FUTURE CO-
OPERATION BETWEEN CANADA AND THE USA IN THE DEFENCE OF
NORTH AMERICA."

3. IN FOURTH PARAGRAPH OF REF A DRAFT, ELIMINATE SECOND
SENTENCE ("ACCORDINGLY, EACH GOVERNMENT HAS DECIDED...
APPROPRIATE LEVEL OF MILITARY CAPABILITY") AND
SUBSTITUTE FOLLOWING: "SINCE SURVEILLANCE AND
CONTROL IN PEACETIME IS EXPECTED TO ASSUME INCREASING
IMPORTANCE, EACH GOVERNMENT HAS DECIDED TO ESTABLISH
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A JOINT CIVIL-MILITARY SYSTEM TO CARRY OUT THESE

ACTIVITIES IN CONJUNCTION WITH THE AIR DEFENSE OPERATIONS OF NORAD."

4. WITH RESPECT TO NORAD MISSION STATEMENT PROPOSED IN REF B IN PARAGRAPH BEINNING "NORAD WILL FUNCTION WITH THE PRIMARY OBJECTIVES OF", CANADIAN DND HAS NOW REAFFIRMED THEIR OBJECTIONS TO HAVING SUCH STATEMENT INCLUDED IN AGREEMENT. DESPITE STATEMENT'S GENERAL WORDING, DND ARGUES THAT MISSION STATEMENT INAPPROPRIATE FOR INCLUSION IN AGREEMENT AS SUCH AND WOULD REQUIRE RENEGOTIATION OF AGREEMENT IN EVENT MISSION ALTERED. THEY HAVE NO PARTICULAR OBJECTION TO STATEMENT, PARTICULARLY AS REFORMULATED IN PARA 5 REF C, BUT FEEL THAT IT SHOULD BE ISSUED IN FORM SEPARATE FROM AGREEMENT ITSELF WHETHER AS PART OF PRESS COMMUNIQUE OR SUBSEQUENT RELEASE. EXTAFF OFFICIALS SUGGESTED THAT DOD AND DND SHOULD DISCUSS BETWEEN THEM MOST APPROPRIATE FORM OF ISSUANCE SUCH PUBLIC STATEMENT OF NORAD MISSION OBJECTIVES.

5. EXTAFF CONTINUES TO PREFER CHANGE IN NUMBERED PARA 1 OF NORAD PRINCIPLES PROPOSED PARA 8(B) REF C AND CHANGE IN NUMBERED PARA 6. PROPOSED PARA 8(C) DESPITE FACT EXPRESSED BY EMBOFFS THAT BOTH THESE CHANGES APPEAR TO BE DUPLICATIVE.

6. EXTAFF LEGAL DIVISION HAS PROPOSED THAT TENTH PARAGRAPH OF REF A DRAFT BE ALTERED TO READ AS FOLLOWS: "IF THE GOVERNMENT OF THE USA CONCURS IN THE CONSIDERATION SET OUT HEREIN, I HAVE THE HONOR TO PROPOSE THAT THIS NOTE, WHICH IS EQUALLY AUTHENTIC IN ENGLISH AND FRENCH, AND YOUR REPLY TO THAT EFFECT SHALL CONSTITUTE AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS WHICH WILL ENTER INTO FORCE ON THE DATE OF YOUR REPLY WITH EFFECT FROM MAY 12, 1975. THIS AGREEMENT WILL SUPERSEDE THE AGREEMENT ON THE NORTH AMERICAN AIR DEFENSE COMMAND EFFECTED BY THE EXCHANGE OF NOTES SIGNED IN WASHINGTON, D.C. ON MAY 12, 1958 AND SUBSEQUENTLY RENEWED BY FURTHER EXCHANGE OF NOTES DATED MARCH 30, 1968, AND MAY 10, 1973."

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7. IN DEFERENCE TO RECOMMENDATION BY PARLIAMENTARY COMMITTEE (OTTAWA 1479), THEY PROPOSE FOLLOWING CONCLUDING PARAGRAPH: "THE PRESENT AGREEMENT WILL REMAIN IN EFFECT FOR A PERIOD OF FIVE YEARS FROM MAY 12, 1975 DURING WHICH ITS TERMS MAY BE REVIEWED AT ANY TIME UPON THE REQUEST OF EITHER PARTY."

8. EXTAFF OFFICIALS JUDGE THAT FOREGOING POINTS ARE RELATIVELY NON-CONTROVERSIAL AND WOULD HOPE FOR CONFIRMATION OF THEIR ACCEPTANCE BY US IN ORDER THAT NEGOTIATIONS MAY NOW CONCENTRATE ON THE FOLLOWING TWO POINTS:

9. ALTHOUGH THEY HAD EARLIER INDICATED THAT THEY PREFERRED THAT A "UNILATERAL USE" CLAUSE NOT BE INCLUDED IN THE INTEREST OF NOT STIMULATING QUESTIONS BY THE INTRODUCTION OF NEW MATERIAL, THE ATTENTION GIVEN TO THIS POINT BY THE PARLIAMENTARY COMMITTEE HAS FORCED THEM TO RE-THINK THE SUBJECT. ACCORDINGLY, THEY WILL BE PROVIDING ASAP A FORMULATION FOR SUCH A CLAUSE FOR US CONSIDERATION IN ORDER TO HAVE AGREED LANGUAGE FOR SUCH A PROVISION READY IN CASE IT DECIDED AT MINISTERIAL LEVEL THAT THE PARLIAMENTARY INTEREST SO REQUIRES.

10. MAJOR PROBLEM IS SIXTH PARAGRAPH OF REF A DRAFT. THEY ARE CONSCIOUS THAT REF B PARA 2(D) FORMULATION HAS BEEN IN EXISTENCE FOR A YEAR IN FORM OF MCC DRAFT AND THAT ITS ACCEPTABILITY TO US AS BASIS FOR NEGOTIATION WAS INDICATED TO THEM IN PJBD. THEY NOTE THAT ITS UNACCEPTABILITY TO GOC WAS, HOWEVER, ALSO STATED IN PJBD. THEY ACKNOWLEDGE THAT THEY MAY HAVE BEEN REMISS IN NOT HAVING UNDERScoreD TO US ITS UNACCEPTABILITY, BUT THAT THEIR POSITION WAS NOT KNOWN TO US, SHOULD NOT THEREFORE COME AS A SURPRISE, AND SHOULD NOT BE INTERPRETED AS EFFORT ON THEIR PART TO GAIN CONCESSION FROM US BY "LAST MINUTE" INSISTENCE ON NEW MATERIAL. THEIR BASIC OBJECTION IS THAT US DRAFT WOULD APPEAR TO PROVIDE FOR A GREATER ROLE NOT PREVIOUSLY ENVISAGED FOR NORAD, NAMELY A SPECIFIC ROLE IN AEROSPACE DEFENSE BEYOND CONFIDENTIAL

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NORAD'S PASSIVE MONITORING AND SURVEILLANCE ROLE. THEY FEEL THAT THEIR FORMULATION ADEQUATELY PROVIDES FOR NORAD'S LEGITIMATE ACTIVITIES WITH REGARD TO THE AEROSPACE THREAT WITHOUT OPENING UNACCEPTABLE HORIZONS FOR ADDITIONAL NORAD ACTIVITY. THEY THEREFORE URGE ACCEPTANCE OF THEIR FORMULATION.

11. GOC'S TIMING PROBLEM RELATES TO DESIRABILITY OF HAVING AGREEMENT SIGNED ON OR BEFORE MAY 12. ALTHOUGH THEIR NEW WORDING ON EFFECTIVE DATE OF AGREEMENT (PARA 6 ABOVE) WOULD ENABLE AGREEMENT TO HAVE RETROACTIVE EFFECT ON MAY 12 IF THERE SHOULD BE SLIPPAGE, THEY ASSUME THAT US SHARES THEIR DESIRE FOR THERE TO BE NO GAP IN LEGAL AUTHORITY FOR NORAD. THEIR TIMING PROBLEM STEMS FROM THE FACT THAT AUTHORITY FOR CANADIAN

AMBASSADOR TO SIGN AGREEMENT MUST, UNDER CANADIAN LAW,
BE GRANTED BY CABINET COUNCIL SO EMPOWERED WHICH MEETS
FOR SUCH PURPOSE ONLY ON TUESDAYS. FOR EXTAFF SECSTATE
TO RECOMMEND FAVORABLE ACTION BY THAT COUNCIL, HE MUST
FIRST HAVE APPROVAL OF FULL CABINET, WHICH MEETS ON
THURSDAYS. FULL CABINET APPROVAL ON MAY 1 WOULD PERMIT
ISSUANCE BY CABINET COUNCIL OF REQUIRED ORDER-IN-COUNCIL
ON MAY 8, ENABLING SIGNING TO TAKE PLACE BEFORE
MAY 12. ONE WEEK'S DELAY IN CABINET CONSIDERATION
WOULD MEAN THAT ORDER-IN-COUNCIL COULD ONLY BE ISSUED
ON MAY 13. PORTER

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